

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JUL 21 2009

JOHN F. CORCORAN, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

EDWARD KUBIK, JR.,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Civil Action No. 7:08cv458

FINAL ORDER ADOPTING REPORT  
AND RECOMMENDATION

By: Judge James C. Turk

Senior United States District Judge

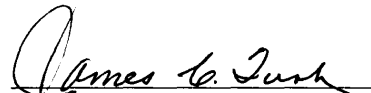
Plaintiff Edward Kubik Jr. brings this action, pursuant to 42 U.S.C. §§ 401-433 and 1381-1383(f), for review of Defendant Michael J. Astrue's ("the Commissioner") final decision denying his claims for disability insurance benefits and supplemental security income under the Social Security Act. The Court referred the matter to United States Magistrate Judge Michael F. Urbanski for a Report and Recommendation (Dkt. No. 12), pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed such a report (Dkt. No. 18), ultimately concluding that substantial evidence supports the Commissioner's conclusion that Kubik is not disabled from all substantial gainful activity. In particular, the Magistrate Judge found that there are no treating, examining, or evaluative medical opinions in the record indicating that Kubik's symptoms rise to a level of permanent disability and, although Kubik may satisfy the first prong of the Listing of Impairments 4.04C, 20 C.F.R. pt. 404, subpt. B, appl., for coronary artery disease, he fails to meet the second prong requiring demonstration of a marked limitation in physical activity. The Magistrate Judge, therefore, recommended that the court affirm the Commissioner's decision.

Kubik filed objections (Dkt. No. 19) within the ten days allotted under 28 U.S.C. § 636(b)(1)(C), and the Commission filed a response (Dkt. No. 20), thereby making the matter ripe for decision. Having reviewed the Report and Recommendation, the objections and responses

thereto, and pertinent portions of the record de novo in accordance with 28 U.S.C. § 636(b)(1)(C), the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Kubik's objections (Dkt. No. 19) are **OVERRULED**, the Magistrate Judge's Report and Recommendation (Dkt. No. 18) is **ADOPTED IN ITS ENTIRETY**, Defendant's Motion ~~to~~ for Summary Judgment (Dkt. No. 14) is **GRANTED**, and Plaintiff's Motion for Summary Judgment (Dkt. No. 9) is **DENIED**. The Clerk of Court is directed to strike the case from the active docket of the court and to send a certified copy of this Final Order to counsel of record for the parties.

ENTER: This 2/26 day of July, 2009.

A handwritten signature in cursive script, appearing to read "James C. Turk", is written over a horizontal line.

Hon. James C. Turk  
Senior United States District Judge